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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,355	07/23/2003	Donald Howard Ellington	125710-2	8222

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01/14/2005

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EXAMINER

BUTTNER, DAVID J

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

15

Office Action Summary

Application No.

10/625,355

Applicant(s)

ELLINGTON ET AL.

Examiner

David Buttner

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Applicant is advised that should claim 9 be found allowable, claim 4 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7,18,26-28 and 34 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7,18 and 34 allow for "about 0" of the stabilizer. This is in conflict with the base claims which require the stabilizer to be present.

Claim 26 requires less than about 50-2000ppm of catalyst. Which is the intended upper limit? Does applicant intend "between" 50-2000ppm? The problem exists for claims 27 and 28.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-44 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagai EP736558.

Nagai (abstract) suggests melt blending polyester and polycarbonate in the presence of a catalyst followed by adding an acidic deactivator. A single Tg results (page 3 line 19). Melt blending is conducted at 260-290⁰ C (page 9 line 12). The acidic substance is fed after ester exchange takes place and multiple kneadings can be used (page 7 line 10-12). The catalyst can be zinc stearate (page 7 line 25). The acidic compound can be phosphoric acid (page 8 line 10). The amounts of catalyst can be 0.0001-1% (page 7 line 41). The amount of acidic compound is 0.001-1% (page 8 line 30). The polyester can be poly(ethylene/cyclohexanedimethanol- terephthalate) (page 5 line 37). Any combination of catalysts, stabilizers and amounts thereof within the disclosure would be obvious if not considered anticipatory.

Claims 1-7,9-13,14-35 and 37-44 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagai EP774491.

Nagai (abstract) suggests blends of polyester and polycarbonate that exhibit a single Tg. A catalyst and protonic acid are included. The catalyst can be zinc stearate (page 7 line 45) in amounts of 0.0001-1% (page 8 line 10). The acid can be phosphoric acid (page 8 line 36) in amounts of 0.001-1% (page 8 line 48). Preferably, the acid after the other components are kneaded (page 9 line 22). Kneading is carried out at 270⁰ C (page 10 line 11). The polyester can be poly(ethylene/cyclohexanedimethanol-

terephthalate) (page 7 line 32). Any combination of catalysts, stabilizers and amounts thereof within the disclosure would be obvious if not considered anticipatory.

Claims 1-7,9-12,14-24,26-32,34,35,37,38 and 41-44 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fox '531.

Fox exemplifies (#5) melt mixing polycarbonate with polyester in the presence of a catalyst at 260⁰ C. A single Tg material results. Inherently, single Tg materials normally are transparent. Phenyl phosphinic acid is then added as a stabilizer. Other types of catalysts (col 5 line 49-68) and stabilizers (col 6 line 23-48) can be used.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Buttner whose telephone number is 571-272-1084. The examiner can normally be reached on weekdays from 10 to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski, can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

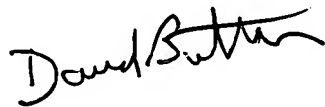
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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DAVID J. BUTTNER
PRIMARY EXAMINER

David Buttner

1/13/05

A handwritten signature in black ink that reads "David Buttner". The signature is written in a cursive style with a large, stylized "D" and "B".